

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ROYAL INDEMNITY COMPANY,)
as successor in interest to Globe)
Indemnity Company)

Plaintiff)

vs.)

CASE NO.:2:05cv1127-F

PEOPLES COMMUNITY BANK)
INCORPORATED, LARRY)
PITCHFORD, JERRY GULLEDGE,)
HARRIS LEVESON, and HARRIS)
PEST AND TERMITE CONTROL,)
INC.,)

ORAL ARGUMENT
REQUESTED

Defendants

MOTION TO RECONSIDER OR SET ASIDE DISMISSAL

COMES NOW the Plaintiff Royal Indemnity Company, pursuant to Federal Rule of Civil Procedure 59, and moves the Court to set aside its judgment of June 27, 2006, dismissing this action without prejudice, and to reinstate this action. This motion is based upon the following:

1. Plaintiff Royal Indemnity Company filed this action on November 28, 2005, seeking declaratory relief that no coverage was afforded to any of the parties in the underlying action, *Harris Leveson and Harris Pest & Termite Control, Inc. v. Peoples Community Bank, Larry Pitchford and Jerry Gulledge*, Civil Action No. 04-20. The underlying suit resulted in a bench verdict of \$2,500,000 in compensatory damages and \$1,000,000 in punitive damages on October 7, 2005. (Complaint for Declaratory Relief at ¶ 10).

2. On January 3, 2006, Defendants Peoples Community Bank, Larry Pitchford and Jerry Gullledge, filed a Motion to Dismiss or Abstain, premising their argument in-part, on the inaccurate assertion that garnishment proceedings had been instituted against Royal Indemnity Company in the Circuit Court, and that the risk of inconsistent judicial determinations made abstention proper.¹

3. On May 31, 2006, those same Defendants, Peoples Community Bank (n/k/a PeoplesSouth Bank, Inc.), Larry Pitchford and Jerry Gullledge filed Civil Action CV-2006-00085 in the Circuit Court of Barbour County styled, *PeopleSouth Bank, et al. v. Progressive Casualty Insurance Co., Royal Indemnity Company, Harris Leveson and Harris Pest & Termite Control, Inc.* In that action, those Plaintiffs alleged that the insurers, Progressive and Royal Indemnity Company², breached their contracts of insurance by failing to provide coverage to the Bank in connection with the underlying suit. The Bank also seeks declaratory relief, requesting the Circuit Court to determine that the Bank Defendants are entitled to coverage under the policy which is the basis of this federal Declaratory Judgment action.

4. The Bank's state court action also includes as fraudulently joined Defendants Harris Leveson and Harris & Termite Company. Progressive and Royal have removed this

¹The Bank Defendants incorrectly asserted in their brief at page 2, that Leveson and Harris instituted garnishment proceedings to recover under the Bank's insurance coverage. The garnishment proceedings were instituted on October 7, 2005, but erroneously sought to garnish Royal & SunAlliance Insurance Agency. Despite notice of the error, Leveson and Harris never corrected their pleadings and Plaintiff Royal Indemnity Company is not and has not been a party to the garnishment or otherwise joined in the underlying action.

²This is the first time a claim has been filed against the insurer Royal Indemnity Company seeking any coverage for the matters involved in the underlying *Leveson* suit against the bank.

state court action to this Court. Accordingly, as the Bank now agrees, the issues in this declaratory judgment action are ripe for adjudication. Accordingly, this Court should not abstain and dismissal of this action is premature.

5. Royal reserves its right to amend and add further grounds to this motion as soon as they may be ascertained.

Wherefore, Plaintiff Royal Indemnity Company respectfully requests the Court to set aside its Judgment of Dismissal and reinstate this action.

ORAL ARGUMENT REQUESTED

Respectfully submitted,

/s/ JOHN C.S. PIERCE
JOHN C.S. PIERCE (PIERJ0347)
MICHAEL A. MONTGOMERY (MONTM9362)
Attorneys for Royal Indemnity Company

OF COUNSEL:
BUTLER, PAPPAS, WEIHMULLER
KATZ CRAIG LLP
P. O. Box 16328
Mobile, Alabama 36616
Telephone: (251) 338-3801
Facsimile: (251) 338-3805

CERTIFICATE OF SERVICE

I hereby certify that on this the 29th day of June, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/EMF system which will serve notification of such filing to the following:

Christopher Max Mims, Esq.
McDowell, Knight, Roedder & Sledge, L.L.C.
Post Office Box 350
Mobile, AL 36601-0350
cmims@mcdowellknight.com

Gerald Palfery Gillespy, Esq.
Burr & Forman LLP
3100 Wachovia Tower
420 North 20th Street
Birmingham, AL 35203
gillespy@burr.com

James D. Farmer, Esq.
Farmer, Farmer & Malone PA
Post Office Drawer 668
Dothan, AL 36303
jdf@ffmlaw.com

Jason A. Walters, Esq.
Burr & Forman LLP
420 North 20th Street, Ste. 3100
Birmingham, AL 35203
jwalters@burr.com

Leah O. Taylor, Esq.
E. Ted Taylor, Esq.
2130 Highland Avenue
Birmingham, AL 35205
taylor9@aol.com
lotaylor@taylorlawyers.com

/s/ JOHN C.S. PIERCE
COUNSEL